CERTIFICATE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902 1904.

No. [redacted] /00.

UNION STOCK YARDS COMPANY OF OMAHA

v.

THE CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED AUGUST 1, 1902.

(19,039.)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 388.

UNION STOCK YARDS COMPANY OF OMAHA

vs.

THE CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 6, 1903.

1 United States Circuit Court of Appeals, Eighth Circuit.

UNION STOCK YARDS COMPANY OF OMAHA, Plaintiff in Error, *vs.* THE CHICAGO, BURLINGTON AND QUINCY Railroad Company, Defendant in Error.	In Error to the Circuit Court of the United States for the District of Nebraska.

The United States circuit court of appeals for the eighth circuit sitting at St. Paul, Minnesota, on this 14th day of July, 1903, hereby certifies that the record in the action above entitled shows that this action is duly pending before this court on a writ of error sued out to reverse a judgment of the circuit court of the United States for the district of Nebraska which sustained a demurrer to the second amended petition of the plaintiff, Union Stock Yards Company of Omaha (Limited) and dismissed its action against the defendant, The Chicago, Burlington and Quincy Railroad Company, on the ground that the petition did not state facts sufficient to constitute a cause of action, and the record herein also shows that these were the facts alleged in that petition:

The plaintiff, The Stock Yards Company, is a corporation which owns stock yards at South Omaha, Nebraska, railroad tracks appurtenant thereto and motive power to operate cars for the purpose of switching them to their ultimate destinations in its yards from a transfer track which connects its tracks with the railways of the defendant, The Burlington Company. The Burlington Company is a railroad corporation engaged in the business of a common carrier of freight and passengers. The defendant places the cars destined for points in the plaintiff's yards on the transfer track adjacent to the premises of the plaintiff and the latter hauls them to

2 their points of destination in its yards for a fixed compensation which is paid to it by the defendant. The plaintiff receives no part of the charge to the shipper for the transportation of the cars but the defendant contracts with the shipper to deliver the cars to their places of ultimate destination in the plaintiff's yards and receives from the shipper the compensation therefor. The defendant delivered to the plaintiff upon the transfer track a refrigerator car of the Hammond Packing Company used by the defendant to transport the meats of that company, to be delivered to that company by the plaintiff in its stock yards. This car was in bad order in that the nut above the wheel upon the brake staff was not fastened to the staff although it covered the top of the staff and rested on the wheel as though it was fastened thereto, and this defect was discoverable upon reasonable inspection. The plaintiff undertook to deliver the car to the Hammond Company and sent Edward Goodwin, one of its servants, upon it for that purpose, who, by reason of this defect, was thrown from the car and injured while he was in the discharge of his duty. He sued the plaintiff and re-

covered a judgment in one of the district courts of Nebraska for the damages which he sustained by his fall on the ground that it was caused by the negligence of the Stock Yards Company in the discharge of its duty of inspection to its employee. This judgment was subsequently affirmed by the supreme court of Nebraska (Union Stock Yards Co. *vs.* Goodwin, 57 Neb. 138) and was paid by the plaintiff.

In the action before this court the Stock Yards Company seeks to recover of the Burlington Company, upon this state of facts, the amount it was compelled to pay by this judgment on the ground that the proximate cause of the injury to its employee, Goodwin, was the negligence of the Burlington Company in the discharge of its duty of inspection of the car before it delivered it to the Stock Yards Company.

3 And the circuit court of appeals for the eighth circuit certifies that the following question of law, among others, has arisen and is presented by the assignment of errors in this case, that its decision is indispensable to a correct determination of the case and that, to that end, it desires the instruction of the Supreme Court upon this question:

Is a railroad company which delivers a car in bad order to a terminal company that is under contract to deliver it to its ultimate destination on its premises for a fixed compensation to be paid to it by the railroad company, liable to the terminal company for the damages which the latter has been compelled to pay to one of its employees on account of injuries he sustained, while in the customary discharge of his duty of operating the car, by reason of the defect in it, in a case in which the defect is discoverable upon reasonable inspection?

In witness whereof, the undersigned judges, holding the said United States circuit court of appeals for the eighth circuit, have hereunto set their hands this 14th day of July, A. D. 1903, at St. Paul, Minnesota, and ordered that the foregoing certificate be filed in said United States circuit court of appeals and by the clerk of said court duly forwarded to the Supreme Court of the United States.

WALTER H. SANBORN,
AMOS M. THAYER,
WILLIS VAN DEVANTER,
Judges of the United States Circuit Court of Appeals for the Eighth Circuit.

4 United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing certificate in the case of Union Stock Yards Company of Omaha, plaintiff in error, *vs.* The Chicago, Burlington and Quincy Railroad Company, defendant in error, No. 1880, May term, A. D. 1903, was

duly filed and entered of record in my office by order of said circuit court of appeals and as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the eighth circuit, at the city of St. Paul, Minnesota, this 14th day of July, A. D. 1903.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk United States Circuit Court of Appeals
for the Eighth Circuit.

5 [Endorsed:] U. S. circuit court of appeals eighth circuit. May term, 1903 No. 1880 Union Stock Yards Company of Omaha, plaintiff in error *vs.* Chicago, Burlington and Quincy Railroad Co. Certificate of a question to the Supreme Court of the United States Filed Jul- 14 1903 John D. Jordan, clerk.

Endorsed on cover: File No. 19,039. U. S. circuit court of appeals, 8th circuit. Term No. 388. Union Stock Yards Company of Omaha *vs.* The Chicago, Burlington & Quincy Railroad Company. Certificate. Filed August 1st, 1903.